

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ANTOLIN ANDREW MARKS,

Plaintiff,

v.

DEENA GEPHARDT, *et al.*,

Defendants.

Case No. C07-5259RJB

ORDER

This matter comes before the Court on the Plaintiff's Motion for Reconsideration of the District Judge's Order of 2-28-08 Based Upon a Basic Error in the Premise for the Previous Motion (Dkt. 61) and the Report and Recommendation of U. S. Magistrate Judge J. Kelley Arnold (Dkt. 60). The Court has considered the Motion for Reconsideration and the Report and Recommendation, objections to the Report and Recommendation, if any, and the record.

Plaintiff filed this 42 U.S.C. 1983/Bivens action on May 15, 2007. Dkt. 1. Plaintiff is incarcerated at the Northwest Detention Center ("NDC") and is going through the process of being deported. *Id.* Plaintiff named employees of GEO, a contractor at the NDC, and federal employees as defendants. *Id.* Defendants McBurney, Nicholas, and McHatton (employees of GEO) were dismissed by stipulation on January 10, 2008. Dkt. 48. Defendants Gephardt and Melendez were dismissed on March 3, 2008 upon the Report and Recommendation of Judge Arnold. Dkt. 58. Plaintiff then filed a motion to dismiss the action against the only remaining Defendant, Dr. Phillip Farabaugh. Dkt. 55. The instant Report and Recommendation addresses Plaintiff's Motion to Dismiss. Dkt. 60.

1 The Report and Recommendation should be adopted and the action dismissed with prejudice.  
2 Plaintiff does not file any objections to adoption of the Report and Recommendation. Plaintiff does file a  
3 Motion for Reconsideration, in which Plaintiff argues that some of the reasoning behind an order affirming  
4 Judge Arnold's order for continuing sanctions was in error. Dkt. 61. In light of the fact that Plaintiff  
5 moved for dismissal of the only remaining defendant, his motion for reconsideration of the February 28,  
6 2008 order should be stricken as moot.

7 Accordingly, it is hereby **ORDERED**:

- 8 • The Report and Recommendation (Dkt. 60) is **ADOPTED**;
- 9 • Plaintiff's Motion for Reconsideration of the District Judge's order of 2-28-2008 Based Upon a  
10 Basic Error in the Premise for the Previous Motion (Dkt. 61) is **STRICKEN AS MOOT**; and
- 11 • The Clerk is directed to send copies of this Order to Plaintiff, all counsel of record, and to the Hon.  
12 J. Kelley Arnold.

13 DATED this 8<sup>th</sup> day of April, 2008.

14   
15 ROBERT J. BRYAN  
16 United States District Judge